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Who is the Labor Relations Commission?

The Labor Relations Commission was established in 1937 to administer Chapter 150A of the General Laws, the Commonwealth's private sector collective bargaining law. That law is sometimes referred to as the "Baby Wagner Act" because it mirrors the rights and obligations established at the federal level by the Wagner Act (which is commonly referred to as the National Labor Relations Act). The National Labor Relations Act grants employees the right to form and join unions and requires employers and employee organizations to bargain in good faith over wages, hours, and working conditions. However, both the National Labor Relations Act and Chapter 150A specifically excluded (and continue to exclude) public employees from coverage.

Following the lead set by President Kennedy in 1962, in 1965, the legislature enacted a series of amendments to Chapter 149, granting full collective bargaining rights to public employees in Massachusetts. Those same amendments charged the Labor Relations Commission with administering the new law. Finally, in 1973, the legislature enacted Chapter 150E, the present public employee collective bargaining law.

Over the years, as the Commission's public sector responsibilities increased, its private sector responsibilities have decreased. Changes in jurisdiction under the National Labor Relations Act have virtually eliminated the Commission's jurisdiction over employers under the state private sector statute. Today, more than 98% of the Commission's work is in the public sector.

What Does the Commission Do?

Pursuant to its responsibility to ensure prompt and fair resolution of labor disputes, the Commission provides the following services:

1. Disposition of Charges of Prohibited Practice

Approximately 80% of the Commission's work is dedicated to adjudicating charges of prohibited practice under M.G.L. c.150A or M.G.L. c.150E. Charges of prohibited practice may include: allegations that an employer discriminated or retaliated against an employee because the employee had engaged in activities protected by law; allegations that an employer or employee organization failed to bargain in good faith; or allegations that an employee organization failed to properly represent a member of the bargaining unit.

When a charge of prohibited practice is filed, the Commission conducts an investigation by asking both parties to submit written position statements, supported by affidavits or other documentary evidence to support the allegations in the charge

or any defenses raised by the respondent. After both parties have filed their evidence, the Commission determines whether there is probable cause to believe that the law was violated in the manner alleged. If the Commission finds probable cause, it will issue a complaint of prohibited practice and schedule hearing before a hearing officer. If the Commission finds that the evidence submitted is insufficient to establish probable cause, it will dismiss the charge and notify the parties by letter. In FY00, approximately 40% of the charges of prohibited practice were dismissed following an investigation. Cases dismissed following an investigation may be appealed to the Appeals Court.

If the Commission issues a complaint of prohibited, a hearing officer will conduct a hearing and the Commission will issue a decision. However, conciliation efforts by the Commissioners and hearing officers often result in voluntary resolution of a case prior to litigation. In FY00, conciliation efforts prior to litigation resulted in the voluntary resolution of 72% of the cases in which the Commission had issued a complaint of prohibited practice. The Commission's final decisions may also be appealed to the Appeals Court.

2. Conduct Representation Elections and Bargaining Unit Determination

The Commission conducts secret ballot elections for employees to determine whether they wish to be represented by a union. Elections are conducted whenever: 1) an employer files a petition alleging that one or more employee organizations claim to represent a substantial number of employees in a bargaining unit; 2) an employee organization files a petition alleging that a substantial number of employees wish to be represented by the petitioner; or 3) an individual files a petition alleging that a substantial number of employees in the bargaining no longer wish to the represented by the current employee organization. Depending on the size of the unit and the relative cost, the Commission conducts elections either on location or by mail ballot.

The Commission is statutorily required to determine an "appropriate" bargaining unit. To make that determination, the Commission considers community of interest among the employees, the employer's interest in maintaining an efficient operation, and the employees' interest in being effectively represented.

The Commission assists the parties to reach agreement concerning an appropriate unit. In FY00, the Commission resolved 90% of its representation cases through voluntary agreement over the scope of the bargaining unit. When no agreement is reached, however, the Commission conducts a hearing, issues a written decision, and, when necessary, directs an election. In FY00, the Commission conducted forty-six (46) elections involving 2,395 employees.

3. Prevention and Termination of Strikes

Strikes by public employees in Massachusetts are illegal. When a public employer believes that a strike has occurred or is imminent, the employer may file a petition with the Commission for an investigation. The Commission quickly investigates the allegations contained in the petition and decides whether an unlawful strike has occurred or is about to occur. If unlawful strike activity is found, the Commission directs striking employees to return to work and issues other orders designed to help the parties resolve the underlying dispute. Most strikes end after the Commission issues its order, but judicial enforcement of the order sometimes necessitates Superior Court litigation which can result in court-imposed sanctions against strikers.

4. Agency Service Fee Determinations

Chapter 150E allows public employers to enter into collective bargaining agreements which require non-union employees covered by the agreement to pay an agency service fee to the union, "commensurate with the cost of collective bargaining and contract administration," as a condition of continued employment. Employees may challenge either the amount of the annual agency service fee or the manner in which the fee was demanded by filing a charge with the Commission. Such charges often require a detailed evaluation of the union's expenses. Hundreds of charges are filed each year raising questions of constitutional rights, auditing and accounting practices, and labor policy. In FY00, the Supreme Judicial Court issued *Wareham Education Association v. Labor Relations Commission*, 430 Mass. 81 (1999), which affirmed an earlier Commission decision concerning the audit requirement for so-called small locals, and *Hogan v. Labor Relations Commission*, 430 Mass. 611 (2000), which affirmed an earlier Commission decision concerning an employer's responsibility when deducting fees from employees' paychecks.

5. Court Litigation

Parties to final decisions issued by the Commission may appeal the decision to the Massachusetts Appeals Court. In those cases, in addition to serving as the lower court—responsible to assemble and transmit the record for appellate review—the Commission is the appellee and defends its decision on appeal. Although a rare occurrence (there were no cases in FY00), M.G.L. c.150E also authorizes the Commission to seek judicial enforcement of its final orders in the Appeals Court or of its interim orders in strike cases in Superior Court. Commission attorneys represent the Commission in all litigation activities.

6. Other Responsibilities

Unit clarification (CAS) petitions are filed by employee organizations or employers seeking to clarify or amend a recognized or certified bargaining unit. The Commission investigates and, where necessary, conducts hearings and issues

decisions resolving those disputes. In FY00, the Commission processed fifty-three (53) CAS petitions.

M.G.L. c.150E provides that a party to a collective bargaining agreement that does not contain a grievance procedure culminating in final and binding arbitration may petition the Commission to order grievance arbitration. These "Requests for Binding Arbitration" (RBA) are processed quickly by the Commission to assist the parties to resolve their grievances. In FY00, the Commission received four (4) requests for binding arbitration.

Pursuant to M.G.L. c.150E, §§13 and 14, the Commission maintains files on employee organizations. Those files include: the name and address of current officers, address where notices can be sent, date of organization, date of certification, and expiration date of signed agreements. Every employee organization is also required to file an annual report with the Commission containing: the aims and objectives of such organization, the scale of dues, initiation fees fines and assessments to be charged to the members, and the annual salaries to be officers. Although M.G.L. c.150E authorizes the Commission to enforce these annual finlings by commencing an action in the Superior Court, the Commission's current resources prohibit such action. Instead, the Commission uses various internal case-processing incentives to encourage compliance with the filing requirements.

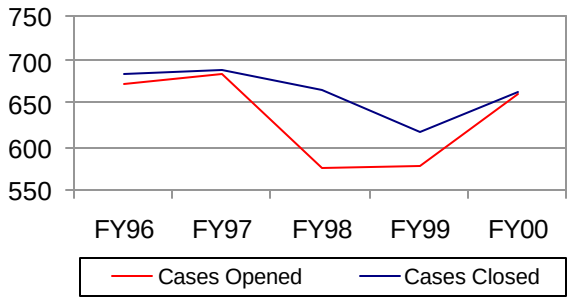
The Commission continually reviews its regulations (456 CMR). In FY00, the Commission amended its regulations in December and again in June (following an open meeting with constituents) to simplify the process of determining the exclusive collective bargaining representative.

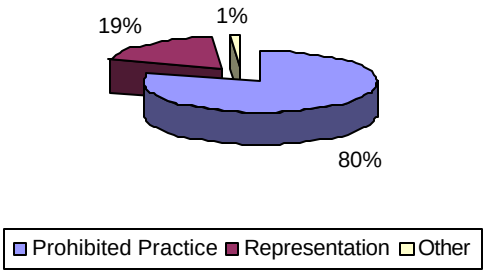
The Commission has adopted an educational goal aimed at training labor and management representatives to foster better labor relations and to reduce the number of preventable or unnecessary charges filed at the Commission. In FY00, Commission representatives participated in several educational forums, including presentations for state agency human resources directors and several unions.

Caseload Analysis

Overview

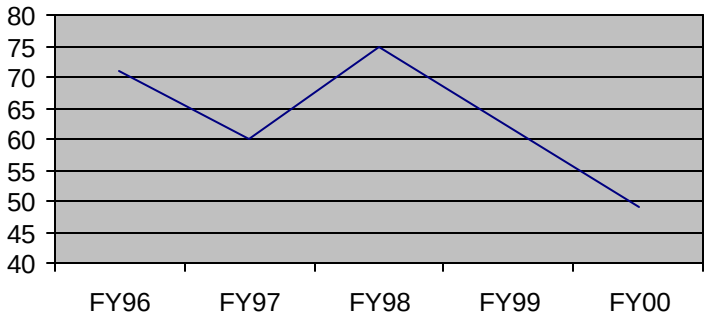
In FY00, the Commission opened 659 non-agency service fee cases, an increase over the last two years, and closed 664 cases, an increase of about 7% over FY99. The chart to the right shows the number of cases opened and closed for FY96 through FY00.





Most of the cases that the Commission processes fall into one of two categories: prohibited practice charges or representation cases. In FY00, the Commission opened 523 non-agency service fee prohibited practice charges and 127 representation cases. The chart to the left shows the breakdown of kinds of cases that were filed in FY00.

At the close of FY00, the average age of a case on the Commission's open docket was forty-nine (49) weeks. That statistic represents a thirty-five percent (35%) decrease in the average age of a case since FY98. The chart below shows the average age of a case on the Commission's open docket from FY96 through FY00.



Prohibited Practice Charges

The majority of prohibited practice charges that are filed with the Commission are filed by employee organizations. However, employers and individuals also file charges. The table below shows who filed prohibited practice charges at the Commission in FY00.

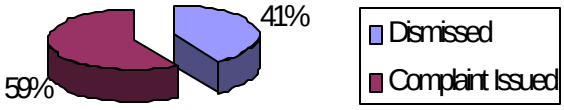
Charges Filed Against Employers	**No.**
♦ By Employee Organizations	434
♦ By Individuals	33
Charges Filed Against Employee Organizations	
♦ By Employers	16
♦ By Other Employee Organizations	1
♦ By Individuals	39
Total	**523**

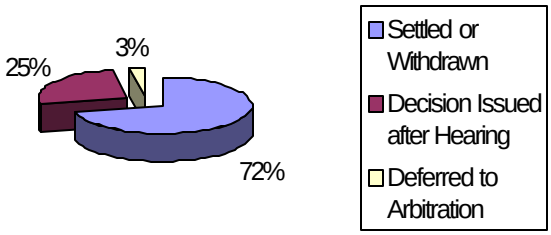
The table below shows whom prohibited practice charges were filed against in FY00.

Respondent	**No.**
Commonwealth of Massachusetts (all Agencies and Departments)	150
Municipalities	209
School Districts	71
Counties	12
Housing Authorities	5
Other	14
Private Employers	3
Employee Organizations	56
Total	**523**

Investigation

M.G.L. c.150E, §11 requires the Commission to conduct an investigation whenever a charge of prohibited practice is filed. In FY00, the Commission conducted 290 investigations, resulting in 171 complaints of prohibited practice. The remaining 119 cases were dismissed. Of those cases that were dismissed, twenty-two were reviewed by the Commission pursuant to 456 CMR 15.04(3). In addition, more than 200 charges were settled or withdrawn prior to the investigation.





Hearing and Decision

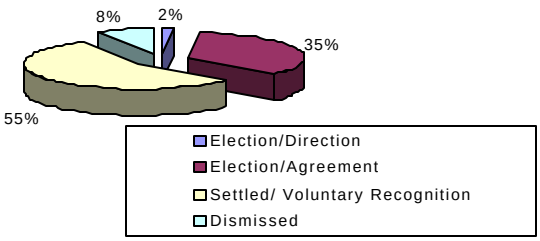
In FY00, the Commission issued fifty-four decisions in cases in which the Commission had issued a complaint of prohibited practice. See pp. 10-14 for a complete list of the decisions that the Commission issued in FY00. A small percentage were deferred to the parties' contractual grievance-arbitration procedure and the remaining 152 cases in which the Commission had issued a complaint of prohibited practice were settled with the assistance of Commission staff prior to, during, or after the hearing.

Representation Cases (Including CAS Cases)

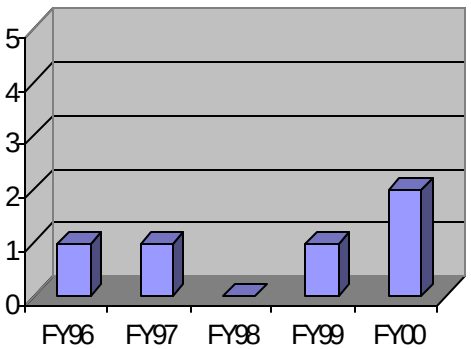
In FY00, the Commission conducted 46 elections involving 2,395 employees.

Size of Unit	Municipal		State		Private		Total	
	No. of Elections	No of Voters	No. of Elections	No of Voters	No. of Elections	No of Voters	No. of Elections	No of Voters
Under 10	15	75	1	5			16	80
10-24	13	201			1	18	14	219
25-49	6	177					6	177
50-74	1	57	1	65			2	122
75-99					1	87	1	87
100-149	2	246					2	246
150-199					1	167	1	167
200-499	4	1,297					4	1,297
Total	**41**	**2,053**	**2**	**70**	**3**	**272**	**46**	**2,395**

In FY00, the Commission processed 125 Representation Cases. In all but two (2%) cases, the Commission resolved the matter without litigation. The chart to the right shows how the Commission resolved the remaining Representation Cases.



Strikes



In FY00, the Commission processed two strike petitions. The chart to the left shows the number of strike petitions the Commission processed between FY96 and FY00. The strike activity over the course of the last five fiscal years has significantly decreased. In the previous five fiscal years, the Commission processed an average of four strike petitions each year, including ten in FY95 alone.

Budget

FY00 Appropriation		**1,143,004**
AA-Employee Compensation	1,014,443	
BB-Travel/Training	11,811	
DD-Pension/Insurance	13,842	
EE-Administrative Expense	42,623	
GG-Space Rental	7,256	
HH-Consultant Services	109	
JJ- Operational Services	0	
KK-Equipment Purchase	18,233	
LL-Equipment Lease & Maintenance	16,475	
Total Spending		**1,124,793**
Uncommitted Balance (Reverted**)**		**18,211**

Published Decisions Issued in FY00

CITY OF FALL RIVER and AFSCME, COUNCIL 93, AFL-CIO, Case No. MCR-4693 (7/15/99) 26 MLC 13 (1999)

CITY OF QUINCY and QUINCY PUBLIC EMPLOYEES ASSOCIATION, Case No. MCR-4650 (7/16/99) 26 MLC 19 (1999)

CITY OF LAWRENCE and LAWRENCE PATROLMEN'S ASSOCIATION, Case No. MUP-2028 et al. (7/22/99) 26 MLC 29 (1999)

CITY OF EVERETT and EVERETT FIRE FIGHTERS, IAFF, LOCAL 1656, Case No. MUP-1542 (7/22/99) 26 MLC 25 (1999)

MASSACHUSETTS DEVELOPMENT FINANCE AGENCY and IAFF, LOCAL S-19, AFL-CIO, Case No. SCR-2234 (8/4/99) 26 MLC 31 (1999)

DRACUT SCHOOL COMMITTEE and MTA/NEA, Case No. MCR-4748 (8/13/99) 26 MLC 36 (1999)

HIGHER EDUCATION COORDINATING COUNCIL and MASS. COMMUNITY COLLEGE COUNCIL, Case No. SUP-4077 (8/14/99) 26 MLC 33 (1999)

SAUGUS EDUCATORS ASSOCIATION and O'BRIEN, Case No. MUPL-4181 (9/2/00) 26 MLC 39 (1999)

TOWN OF WENHAM and WENHAM CALL FIRE FIGHTERS ASSOCIATION, Case No. CAS-3370 (9/9/99) 26 MLC 41 (1999)

COMMONWEALTH OF MASSACHUSETTS, COMMISSIONER OF ADMINISTRATION AND FINANCE and EDWARDS, (Case No. SUP-3855 et al. (9/14/99) 26 MLC 43 (1999)

CHIEF JUSTICE FOR ADMINISTRATION AND MANAGEMENT OF THE TRIAL COURT and OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 6, AFL-CIO, Case No. SUP-4120 (9/22/99) 26 MLC 45 (1999)

COMMONWEALTH OF MASSACHUSETTS, COMMISSIONERS OF ADMINISTRATION AND FINANCE and AFSCME, COUNCIL 93, AFL-CIO, Case No. SUP-4366 (10/27/99) 26 MLC 49 (1999)

SOUTH MIDDLESEX REGIONAL VOCATIONAL TECHNICAL SCHOOL DISTRICT and AFSCME, COUNICL 93, AFL-CIO, Case No. MUP-1485 (10/27/99) 26 MLC 51 (1999)

ATHOL-ROYALSTON REGIONAL SCHOOL DISTRICT and ATHOL TEACHERS ASSOCIATION, Case No. MUP-1832 (11/2/99) 26 MLC 55 (1999)

NAGE and LONGO, Case No. SUPL-2650 (11/9/99) 26 MLC 57 (1999)

BOSTON WATER AND SEWER COMMISSION and FOWLER, Case No. MUP-1677 (12/16/99) 26 MLC 61 (1999)

TOWN OF BARNSTABLE and AFSCME, COUNCIL 93, AFL-CIO, Case No. MUP-1487 (12/29/99) 26 MLC 67 (1999)

CITY OF GARDNER and GARDNER FIRE FIGHTERS, IAFF, LOCAL 2215, Case No. MUP-1949 (1/5/00) 26 MLC 72 (2000)

CITY OF BOSTON and BOSTON POLICE SUPERIOR OFFICERS FEDERATION, Case No. MUP-1478 (1/6/00) 26 MLC 80 (2000)

TOWN OF NORTH ATTLEBORO and NORTH ATTLEBORO FIRE FIGHTERS, IAFF, LOCAL 1992, Case No. MUP-1289 (1/6/00) 26 MLC 84 (2000)

COMMONWEALTH OF MASSACHUSETTS and MASSACHUSETTS NURSES ASSOCIATION, Case No. SUP-4281 et al. (1/7/00) 26 MLC 87 (2000)

COMMONWEALTH OF MASSACHUSETTS/COMMISSIONER OF ADMINISTRATION AND FINANCE and MASSACHUSETTS NURSES ASSOCIATION, Case No. SUP-4235 (1/7/00) 26 MLC 212 (2000)

BOARD OF HIGHER EDUCATION and MASS. COMMUNITY COLLEGE COUNCIL, Case No. SUP-4509 (1/11/00) 26 MLC 91 (2000)

HOTEL AND RESTAURANT EMPLOYEES INTERNATIONAL UNION, LOCAL 26 and BAGLIO, et al., Case No. UPL-147 et al. (1/12/00) 26 MLC 94 (2000)

CITY OF HOLYOKE and IBPO, LOCAL 388, Case No. MUP-1801 (1/14/00) 26 MLC 97 (2000)

MASSACHUSETTS PORT AUTHORITY and INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 810, AFL-CIO, Case No. UP-2624 (1/14/00) 26 MLC 100 (2000)

SHREWSBURY EDUCATION ASSOCIATION and SHREWSBURY SCHOOL COMMITTEE, Case No. SI-262 (1/2100) 26 MLC 103 (2000)

BRISTOL COUNTY and SOUSA, Case No. MUP-2100 (1/28/00) 26 MLC 105 (2000)

LOWELL SCHOOL COMMITTEE and UNITED TEACHERS OF LOWELL, LOCAL 495, MFT/AFT/AFL-CIO, Case No. MUP-1775 (1/28/00) 26 MLC 111 (2000)

COMMONWEALTH OF MASSACHUSETTS, COMMISSIONER OF ADMINISTRATION AND FINANCE and ALLIANCE, SEIU, LOCAL 509, Case No. SUP-4158 (2/15/00) 26 MLC 116 (2000)

COMMONWEALTH OF MASSACHUSETTS/COMMISSIONERS OF ADMINISTRATION AND FINANCE and LOCAL 509, SEIU, AFL-CIO, Case No. SUP-4123 (2/28/00) 26 MLC 123 (2000)

CITY OF GLOUCESTER and GLOUCESTER POLICE PATROLMEN'S ASSOCIATION, Case No. MUP-2180 (3/1/00) 26 MLC 128 (2000)

TOWN OF PLYMOUTH and AFSCME, COUNCIL 93, AFL-CIO, Case No. MUP-1251 (3/6/00) 26 MLC 131 (2000)

TOWN OF SOMERSET and IBPO, LOCAL 518, Case No. MUP-1979 (3/7/00) 26 MLC 132 (2000)

BOSTON TEACHERS UNION, LOCAL 66 and JORDAN, Case No. MUPL-4215 (3/7/00) 26 MLC 137 (2000)

COMMONWEALTH OF MASSACHUSETTS/OFFICE OF THE ATTORNEY GENERAL and MASS. ORGANIZATION OF STATE ENGINEERS AND SCIENTISTS, Case No. SUP-4301 (3/9/00) 26 MLC 139 (2000)

BOARD OF TRUSTEES OF UNIVERISTY OF MASSACHUSETTS and NATIONAL ASSOCIATON OF GOVERNMENT EMPLOYEES, Case No. SUP-4489 (3/9/00) 26 MLC 143 (2000)

CITY OF BOSTON and BOSTON POLICE PATROLMEN'S ASSOCIATION, Case No. MUP-1085 (3/10/00) 26 MLC 144 (2000)

TRUSTEES OF UNIVERSITY OF MASSACHUSETTS MEDICAL CENTER and MASSACHUSETTS NURSES ASSOCIATION, Case No. SUP-4392 et al. (3/10/00) 26 MLC 149 (2000)

COMMONWEALTH OF MASSACHUSETTS and AFSCME, COUNCIL 93, AFL-CIO, Case No. SUP-3835 (3/13/00) 26 MLC 161 (2000)

COMMONWEALTH OF MASSACHUSETTS and AFSCME, COUNCIL 93, AFL-CIO, Case No. SUP-3972 (3/13/00) 26 MLC 165 (2000)

COMMONWEALTH OF MASSACHUSETTS and AFSCME, COUNCIL 93, AFL-CIO, Case No. SUP-3993 (3/13/00) 26 MLC 169 (2000)

CHIEF JUSTICE FOR ADMINISTRATION AND MANAGEMENT OF THE TRIAL COURT and OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 6, AFL-CIO, Case No. SUP-4407 (3/16/00) 26 MLC 175 (2000)

CITY OF BOSTON and BOSTON POLICE PATROLMEN'S ASSOCIATION, Case No. MUP-1431 (3/23/00) 26 MLC 177 (2000)

BARNSTABLE COUNTY and NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, Case No. MCR-4744 (3/28/00) 26 MLC 183 (2000)

CITY OF GARDNER and GARDNER FIRE FIGHTERS, Case No. MUP-2201 (3/30/00) 26 MLC 189 (2000)

CITY OF QUINCY and QUINCY SUPERVISORY UNION, DISTRICT 925, SEIU, AFL-CIO, Case No. MUP-9928 (4/3/00) 26 MLC 190 (2000)

GARDNER SCHOOL COMMITTEE and AFSCME, COUNCIL 93, AFL-CIO, Case No. CAS-3340 (4/6/00) 26 MLC 195 (2000)

BROCKTON SCHOOL COMMITTEE and BROCKTON EDUCATION ASSOCIATION, Case No. MCR-4740 et al. (4/6/00) 26 MLC 191 (2000)

BOARD OF HIGHER EDUCATION and MASS. COMMUNITY COLLEGE COUNCIL, Case No. SUP-4509 (4/12/00) 26 MLC 198(2000)

TOWN OF TEMPLETON and SANS, Case No. MCR-4787 (4/14/00) 26 MLC 199 (2000)

WAKEFIELD SCHOOL COMMITTEE and AFSCME, COUNCIL 93, AFL-CIO, Case No. MUP-2441 (4/18/00) 26 MLC 200 (2000)

TOWN OF DENNIS and IBPO, LOCAL 579, Case No. MUP-1868 (4/21/00) 26 MLC 203 (2000)

TOWN OF WAREHAM and WAREHAM SUPERIOR OFFICERS ASSOCIATION, Case No. MCR-4782 (4/27/00) 26 MLC 206 (2000)

COMMONWEALTH OF MASSACHUSETTS and MASS. CORRECTION OFFICERS FEDERATED UNION, Case No. SUP-4282 (5/2/00) 26 MLC 209 (2000)

CITY OF BOSTON/BOSTON PUBLIC LIBRARY and AFSCME, COUNCIL 93, LOCAL 1526, AFL-CIO, Case No. MUP-2081 (5/13/00) 26 MLC 215 (2000)

COMMONWEALTH OF MASSACHUSETTS/COMMISSIONER OF ADMINISTRATION AND FINANCE and MASS. CORRECTION OFFICERS FEDERATED UNION, Case No. SUP-4514 (5/31/00) 26 MLC 218 (2000)

TOWN OF PLYMOUTH and AFSCME, COUNCIL 93, AFL-CIO, Case No. MUP-1465 (6/7/00) 26 MLC 220 (2000)

CITY OF TAUNTON and TAUNTON FIRE FIGHTERS, IAFF, LOCAL 1391, Case No. MUP-2089 (6/9/00) 26 MLC 225 (2000)

COMMONWEALTH OF MASSACHUSETTS/ COMMISSIONER OF ADMINISTRATION AND FINANCE and NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, Case No. SUP-4288 (6/12/00) 26 MLC 228 (2000)

COMMONWEALTH OF MASSACHUSETTS, COMMISSIONER OF ADMINISTRATION AND FINANCE and ALLIANCE, AFSCME-SEIU, LOCAL 509, Case No. SUP-4304 (6/30/00) 27 MLC 1 (2000)

Selected Labor Relations Commission Decisions[1]

July 1, 1999 – June 30, 2000

In National Association of Government Employees, 26 MLC 57 (1999), the Commission considered whether the Union breached its duty of fair representation by failing to file a grievance seeking retroactive pay for the charging party and by failing to respond to his inquiries after notifying him that it would not process his grievance. The charging party had filed a class action grievance claiming that he and fellow employees were working out of grade and seeking to be reclassified. The Union negotiated a settlement of that grievance with the employer that provided for the charging party's position to be upgraded. The charging party informed the Union that he also wanted to pursue retroactive pay, and the Union recommended that he accept the settlement to get his foot in the door and pursue retroactive pay through another grievance. After accepting the settlement, the charging party met with a Union representative to discuss a grievance over retroactive pay. The Union representative reviewed the contract, determined that there was no contractual basis for a grievance over retroactive pay, and left a message for the charging party informing him that it was not possible for the Union to file a grievance for him. The charging party tried unsuccessfully to reach the Union representative several times after receiving that message.

The Commission concluded that the Union did not breach its duty of fair representation by the manner it represented the charging party in connection with his upgrade grievance. The Commission observed that it would not inquire into whether the Union's advice that the charging party accept the settlement was sound and that, absent evidence of bad faith or inexcusable neglect, it would not substitute its judgment for that of the Union. Further, there was no evidence that the Union was incorrect in concluding that there was no contractual basis for a grievance seeking retroactive pay. Finally, although the Union may have been inattentive after deciding not to pursue that grievance, there was no evidence that its poor communication negatively affected its representation of the charging party.

In Boston Water and Sewer Commission, 26 MLC 61 (1999) (on appeal), the Commission addressed an unusual evidentiary issue. The case involved an allegation that the Employer had violated Sections 10(a)(1) and (3) of the Law by demoting and discharging an employee because of his union organizing activity, and a central issue in the case was whether the Employer had knowledge of the protected activity. The charging party did not cite any direct evidence that the

[11] This summary is not intended to be a comprehensive review of all Commission decisions that have issued during the past year. Rather, it highlights significant decisions of the Commission during that period.

managers who made the adverse employment decisions knew of the employee's organizing activity and argued that the Commission should infer knowledge by: 1) disbelieving the managers' testimony; or 2) by applying the small plant doctrine. The Commission declined to apply the small plant doctrine because the Employer had 550 employees and there was insufficient evidence that the charging party discussed the organizing campaign with any of the Employer's senior staff. Therefore, the Commission could not infer that the Employer must have known that concerted activity had taken place on its premises.

Relying on several court decisions, the Commission also determined that, even if it disbelieved the managers' testimony about whether they had knowledge of the charging party's organizing activity, it would not warrant a finding that the opposite fact is true. Therefore, the Commission concluded that, absent affirmative proof that the Employer knew of the organizing activity, the charging party had failed to establish a prima facie case.

Employer knowledge of protected activity was also a central issue in Bristol County, 26 MLC 105 (2000). In that case, the Union alleged that the County had violated Sections 10(a)(3) and (1) of the Law by retaliating against an employee because of his union organizing activity. There was evidence that the employee had attempted to conceal his organizing activities and that the Union had conducted a low-key organizing campaign with no organizing meetings on the County's premises or signs posted announcing off-site meetings. Therefore, the Commission concluded that the employee's organizing activities did not take place in a manner that would have made the County aware of those activities.

The issues before the Commission in Town of North Attleboro, 26 MLC 84 (2000) (on appeal) were: 1) did the Town had unilaterally changed its dues check-off practice in violation of Sections 10(a)(5) and (1); and 2) did the Town interfere with the administration of the Union in violation of Section 10(a)(2) when it denied a request by the Union to increase dues deductions. For twenty-five years, the Town deducted Union dues pursuant to the parties' collective bargaining agreement, and it adjusted the amount of dues deducted whenever the Union requested it to do so. In 1995, the Town discontinued payroll deductions for dental insurance coverage because the Town believed they were not permitted under M.G.L. c. 180, Section 17J. The Union responded by requesting the Town to increase dues deductions by the same amount as employees were previously paying for dental insurance coverage. However, the Town refused on the ground that the Union's request for increased dues deductions was a subterfuge to evade the requirements of M.G.L. c. 180, Section 17J.

The Commission found that the Town's practice was to implement dues deduction increases without inquiring into how the Union would use those dues. Therefore, the Town failed to bargain in good faith when it unilaterally altered that

existing check-off practice by denying the Union's request to increase dues deductions. Further, the Commission determined that the Town had interfered with the Union's internal financial affairs in violation of Section 10(a)(2) of the Law by failing to remit the increased dues to the Union.

In City of Holyoke, 26 MLC 97 (2000), the Commission considered whether the City had unilaterally transferred bargaining unit work to non-unit personnel in violation of Section 10(a)(5) and (1) when it requested the State Police to supplement police patrols in high crime areas of the City. The evidence before the Commission was that, prior to January 1997, City police officers had conducted all of the police patrols. In 1997, however, the City requested a state police presence in the City to supplement City police services. The City did not lay off any bargaining unit members, the City did not change staffing levels, and there was no change in the amount of overtime worked by unit members. The Commission concluded that police patrol wok in the City was bargaining unit work and that the City transferred that work to the state police when it asked the state police to supplement City police patrols. Although the City argued that its decision to seek assistance from the state police did not have any immediate economic impact on individual bargaining unit members, the Commission found that the City's action had an adverse impact on the bargaining unit. The Commission reasoned that, because of transfer of unit work could gradually erode the bargaining unit and its work, the City was required to bargain before transferring any police patrol duties to the state police.

The issue in Lowell School Committee, 26 MLC 111 (2000)(on appeal) was whether the School Committee violated Sections 10(a)(5) and (1) of the Law by implementing a mentor program and a mentor program for its teachers. Because M.G.L. c. 71, Section 38G and draft guidelines of the Department of Education (DOE) required all school districts to have a mentoring program in place before September 1997 as a condition of hiring beginning teachers, the Commission concluded that the School Committee was not required to bargain over the School Committee's decision to establish a mentoring program. Although the DOE guidelines included suggested compensation, mentor selection criteria, and mentor assignments, the Commission found that neither the statute nor the guidelines set requirements that precluded bargaining about the impacts of the mentor program on working conditions. Therefore, the School Committee was required to bargain over the impacts of a mentoring program on working conditions, including the conditions of employment of mentors and mentor trainees.

In fashioning a remedy for the School Committee's unilateral action, the Commission recognized that requiring the School Committee to suspend the mentor program while it bargained with the Union could jeopardize the programs and the employment status of some teachers. Therefore, the Commission ordered the School Committee to bargain with the Union but permitted the School Committee to preserve the mentor program through the remainder of the 1999-2000 school year.

However, if the parties have not completed bargaining by that time, the School Committee shall suspend the existing program and refrain from implementing any mentor programs until it has bargained with the Union to resolution or impasse about the impacts of the program on working conditions.

In Trustees of the University of Massachusetts Medical Center, 26 MLC 149 (2000), the Commission considered several issues arising out of the proposed merger between the Employer and Memorial Hospital, a private institution. A key issue before the Commission was whether the Employer was required to provide the Union with documents regarding a merger or affiliation of the Employer and Memorial Hospital, the planned future status of the two institutions, or any plans to alter the Employer's operations arising out of the merger. The Employer's initial response was to ask the Union why it needed the information, and, after the Union explained its reasons, the Employer provided affiliation agreement and merger documents, but not information about the plans for how the merger would be implemented. The Employer declined to provide that information because: 1) it involved matters being developed and not yet finalized; and 2) the requested information could involve attorney-client communications and core managerial discretion. Guided by the decision in Providence Hospital v. NLRB, 93 F.3d 1012 (1st Cir. 1996), the Commission determined that the Employer's merger plans were sufficiently advanced that they were more than mere speculation. Accordingly, the Union was entitled to that information to enable it to represent the employees affected by those plans. Further, the Commission concluded that the Employer had not met its burden of demonstrating why any particular documents were protected by the attorney-client privilege or other confidentiality concerns. Even if they were, however, the Employer was obligated to explore alternative ways to give the Union access to the requested information, but failed to do so.

Another central issue in the case was whether the Employer had failed to bargain in good faith in violation of Sections 10(a)(5) and (1) of the Law by filing merger legislation prior to bargaining with the Union to resolution or impasse about the impact of that legislation on working conditions. The parties began bargaining about the impacts of proposed merger legislation on March 18, 1997. The following day, the Employer notified the Union that it needed to move the legislation and proposed a two-week limit on the parties' bargaining prior to filing it. The Union rejected that proposal, and the Employer filed the legislation on April 14, 1997. The Commission determined that, because the Employer arbitrarily shortened the time period for bargaining, it failed to bargain with the Union in good faith over the conditions of employment in the merger legislation by terminating bargaining before reaching an agreement with the Union.

In a series of three cases, the Commission considered whether the Commonwealth of Massachusetts had violated Sections 10(a)(5) and (1) of the Law by privatizing dietary and housekeeping services at several institutions operated by

the Departments of Public Health and Mental Retardation (DPH and DMR). Commonwealth of Massachusetts, 26 MLC 161 (2000)(on appeal); Commonwealth of Massachusetts, 26 MLC 165 (2000); and Commonwealth of Massachusetts, 26 MLC 169 (2000)(on appeal).

26 MLC 169

The Commission found that there was language in the parties' collective bargaining agreement requiring the Commonwealth to convene a special labor-management committee at the Union's request if the Union desired to discuss the purchase of services being provided by employees covered by the agreement. The Union wrote to the Commonwealth to request a meeting of the special labor-management committee to address the subcontracting of dietary services at DPH, but the Commonwealth did not convene the special labor-management committee as requested. Therefore, the Commission determined that the Commonwealth repudiated the parties' agreement. The Union also argued that the parties had agreed during negotiations that it would be permitted to bid on the dietary services the Commonwealth was proposing to privatize and that the Commonwealth repudiated that agreement when it subcontracted the services without considering a proposal from the Union. However, the Commission concluded that the evidence did not demonstrate the parties had ever reached an agreement to permit the Union to bid on the services.

26 MLC 165

The Commission held that the Commonwealth had repudiated the language of the parties' agreement by failing to convene a special labor-management committee after the Union had requested that the committee meet. Although the Union had also argued that the language in the parties' agreement required the committee to meet and complete its work before the Commonwealth could subcontract unit work, the Commission found the relevant language too ambiguous to support the Union's argument. Therefore, absent any bargaining history to resolve that ambiguity, the Commonwealth did not repudiate a clear contractual mandate when it subcontracted unit work before a special labor-management committee met and made recommendations.

26 MLC 161

The issue in this case was whether the Commonwealth had violated Sections 10(a)(5) and (1) of the Law by failing to bargain with the Union before subcontracting housekeeping and dietary services at Fernald State School. The Commonwealth argued that it had no bargaining obligation here because: 1) its decision to privatize the services was a level of services decision; 2) the Union failed to submit any written cost savings proposals; 3) the affected employees lacked expertise in the new high tech food delivery system; and 4) the Union contractually waived its right to bargain. First, the Commission rejected the Commonwealth's level of services argument on the ground that the decision to subcontract services here did not relate

to the amount of services being provided but whether they would be provided by existing bargaining unit members. Second, the Commission found no relationship between whether the Union had presented the Commonwealth with a cost savings proposal or its own bid to perform the services and the Commonwealth's duty to bargain about subcontracting bargaining unit work. Third, the Commission declined to excuse the Commonwealth from its bargaining obligation on the ground that the bargaining unit members lacked sufficient expertise, reasoning that providing current employees training was the very kind of topic that the parties could have bargained about. Finally, the Commission determined that the language in the parties' agreement concerning a special labor-management committee and language requiring the Commonwealth to notify the Union when work to be subcontracted could result in a layoff so the parties could discuss the availability of similar positions did not consciously waive the Union's right to bargain about the decision to subcontract the dietary and housekeeping services at issue here.

The issue before the Commission in Commonwealth of Massachusetts, 26 MLC 209 (2000) (on appeal) was whether the Commonwealth violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law when it issued new post orders for correction officers employed at MCI Plymouth. The facts before the Commission reflected that, prior to March 1996, correction officers at MCI Plymouth were subject to post orders that defined the specific duties and responsibilities of employees assigned to a particular post. Those post orders contained no time periods for completing any of the listed duties and, under those orders, an officer would remain at his or her post until being relieved by an incoming officer. In March 1996, however, the Commonwealth implemented new post orders that designated times for performing specific duties and set specific times for the beginning and ending of shifts.

The Commission concluded that the Commonwealth did not alter an existing condition of employment that triggered a bargaining obligation when it issued the new post orders. The Commission reasoned that the time designations in the new post orders did not increase the amount of time officers spent on any tasks or change the duties an officers was required to perform. Rather, employees were required to complete the same tasks by the end of their shift, under both the old and new post orders. Further, the Commonwealth has not required officers to adhere to the time periods in the new post orders. Therefore, the Commission found that the time designations are merely a codification of optimal time frames and not an additional job requirement over which the Commonwealth was required to bargain.

In Town of Plymouth, 26 MLC 220 (2000)(on appeal), the Commission considered whether the Town of Plymouth (Town) had violated Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law by implementing a drug and alcohol policy for certain employees of its public works department (DPW) without bargaining to resolution or impasse with AFSCME, Council 93, the Union representing those

employees. On March 17, 1994, the Federal Highway Administration promulgated a regulation requiring employers with fifty or more employees who drive commercial motor vehicles to implement certain drug and alcohol testing requirements on January 1, 1995. Between March 1995 and October 1995, the parties held several bargaining sessions about the impacts of a proposed policy the Town had developed in response to the Federal directive. On August 10, 1995, the parties reached a tentative agreement, but the Union's membership voted to reject it. The Union wrote to the Town asking to continue bargaining, and the Town responded with a request for reasons why the Union's membership had rejected the tentative agreement. The Union declined to provide any reasons via mail and again requested to meet. Because the Union did not provide the Town with written reasons for rejecting the tentative agreement, the Town declared that the parties were at an impasse in their negotiations and implemented its proposed drug and alcohol policy.

The Commission determined that the parties were not at impasse and that the Town had unilaterally implemented the drug and alcohol policy. The Commission held that the parties were not at impasse because the Union expressed a desire to continue bargaining and to bring the parties back to the bargaining table, but the Town attempted to avoid further bargaining by insisting on knowing the reasons why the Union's membership had rejected the tentative agreement before agreeing to return to the bargaining table. Further, the Commission rejected the Town's argument that the Federal rule required it to implement a drug and alcohol policy by January 1995. Because the Town did not implement the policy until November 1995, the Commission found it was illogical for the Town to argue that there were circumstances beyond its control that required it to implement the policy when it did.

Labor Relations Commission
Litigation Activity
July 1, 1999 – June 30, 2000

I. Decisions Issued

1. City of Cambridge v. Labor Relations Commission, 47 Mass. App. Ct. 1108 (1999). An appeal from a final Commission decision finding that the Cambridge Police Superior Officers' Association had actual notice and waived by inaction its right to bargain about a transfer of command responsibilities to newly-created non-unit positions. The City appealed on the ground that the Commission failed to address additional defenses it raised. The Appeals Court issued a decision pursuant to Rule 1:28 concluding that there was substantial evidence to support the Commission's decision that the Association had waived its right to bargain by inaction.

2. City of Boston v. Labor Relations Commission, 48 Mass. App. Ct. 169 (1999). An appeal from a final Commission decision concluding that the Boston Police Superior Officers Federation did not contractually waive its right to bargain about weekly differentials for certain members of the unit. The Appeals Court affirmed the Commission's decision, concluding that there was substantial evidence to support the Commission's finding that the Union had not contractually waived its right to bargain.

3. Local 388, IBPO v. Labor Relations Commission, A.C. No. 98-P-744. An appeal from a pre-complaint dismissal concluding there was insufficient probable cause to believe that a Union president had engaged in concerted, protected activity by making statements to a co-worker the Commission found to be derogatory. The Appeals Court summarily affirmed the Commission's decision.

4. Wareham Education Association v. Labor Relations Commission, 430 Mass. 81 (1999). An appeal from a final Commission decision holding that small local unions are not exempt from providing agency fee payers with audited financial information at the time they demand service fees. The SJC affirmed the Commission, holding that there is no exception to the requirement in Chicago Teachers Union, Local 1 v. Hudson, 475 U.S. 292, 307 n. 18 (1986) that unions provide agency fee payers with audited financial information for small local unions.

5. Hogan v. Labor Relations Commission, 430 Mass. 611 (2000). An appeal from a pre-complaint dismissal concluding that a public employer does not violate Section 10(a)(1) of Chapter 150E by proposing to suspend an employee for failing to pay an agency fee, even if a union used improper procedures to collect the fee. The SJC

granted a request for direct appellate review and affirmed the Commission's decision.

6. SEIU, Local 509 v. LRC, 431 Mass. 710 (2000). An appeal from a Commission decision that the Commonwealth of Massachusetts did not violate Sections 10(a)(1) and (5) of Chapter 150E by surveying employees about sick leave benefits while collective bargaining negotiations were in progress. The SJC reversed the Commission and concluded that the Commonwealth had engaged in direct dealing with employees in violation of the obligation to bargain in good faith.

II. Pending Cases

1. City of Somerville v. Labor Relations Commission, A.C. No. 98-P-1206. An appeal from a final Commission decision holding that the position of City Clerk and Assistant City Clerk were not legislative positions excluded from the coverage of Chapter 150E, Section 1. The Appeals Court heard arguments on March 10, 2000.

2. Gifford v. Labor Relations Commission, A.C. No. 98-P-1441. An appeal from a pre-complaint dismissal finding that the Boston Police Superior Officer's Federation had not breached its duty of fair representation by declining to represent an employee in connection with a reprimand because the conduct giving rise to the reprimand arose when the employee was in a management position. Briefing was completed on March 16, 1999.

3. Herbert v. Labor Relations Commission, A.C. No. 99-P-205. An appeal from a pre-complaint dismissal finding that a duty of fair representation charge was untimely and the Massachusetts Nurses Association did not breach its duty of fair representation toward her by concluding that she was not entitled to participate in a remedy ordered in a prior prohibited labor practice case. The parties completed briefing on April 23, 1999.

4. Collective Bargaining Reform Associates v. Labor Relations Commission, Suffolk Superior Court C.A. No. 99-0806C. Collective Bargaining Reform Associates filed an action in Superior Court attempting to appeal from the Commission's decision dismissing a representation petition seeking to sever communication equipment operators from a larger unit of City of Boston employees. The plaintiff filed a motion for judgment on the pleadings, and the Commission and the intervenors filed an opposition, arguing that Commission decisions in representation cases are not final orders subject to judicial review.

5. Wong v. LRC, A.C. No.99-P-286. An appeal from a pre-complaint dismissal dismissing a DFR charge as untimely. The parties completed briefing in September 1999.

6. AFSCME v. LRC, A.C. No. 99-P-834. An appeal from a pre-complaint dismissal concluding that the City of New Bedford had not repudiated an agreement regarding personal leave for emergency medical services personnel employed by the City. The parties completed briefing in September 1999.

7. City of Boston v. LRC, A.C. No. 99-P-1171. An appeal from a Commission decision holding that the City of Boston had violated Sections 10(a)(5) and (1) of Chapter 150E by failing to provide Boston Firefighters, Local 718 IAFF with notes taken by an attorney retained by the City during an investigation of alleged harassment by an employee represented by the Union. The parties completed briefing in September 1999.

8. Mansfield v. LRC, A.C. No. 99-P-1215. An appeal from a full Commission decision holding that the Town of Mansfield violated Sections 10(a)(1) and (5) of Chapter 150E by failing to bargain with the Union about the impacts of eliminating patrol officer positions from a split shift. The parties completed briefing in November 1999.

9. Worcester v. LRC, A.C. No. 99-P-1443. An appeal from a full Commission decision holding that the City of Worcester violated Section 10(a)(1) and (5) by failing to bargain with the Union about the impacts of a decision to designate police officers as supervisors of attendance. The parties completed briefing in November 1999.

10. Massachusetts Correction Officers Federated Union v. LRC, A.C. No. 99-P-1057. An appeal from a pre-complaint dismissal finding that there was insufficient probable cause to believe that the Commonwealth had unilaterally assigned new cleaning duties to correction officers without giving the Union prior notice or an opportunity to bargain. The parties completed briefing in September 1999.

11. Belhumeur v. Labor Relations Commission, No. SJC-08163. An appeal from a decision issued by the Commission following a fifty-three day hearing to determine whether the amount of the agency service fees the Massachusetts Teachers Association demanded based on its expenses for 1990-91 exceeded the cost of collective bargaining and contract administration. The issues on appeal include whether the Commission had properly allocated the burden of proof between the parties, whether the Commission had applied the correct method for calculating the amount of the fee, and whether the Commission correctly determined that several expenses were chargeable or non-chargeable. The SJC heard arguments on April 4, 2000.

III. Cases Awaiting Briefing

1. Wilson v. LRC, A.C. No. 2000-P-0598. An appeal of a pre-complaint dismissal of a charge alleging a union breached the duty of fair representation by precluding an employee from presenting certain evidence at an arbitration.

2. Fowler v. LRC, A.C. No. 200-P-0451. An appeal from a full Commission decision concluding that the Boston Water and Sewer Commission did not violated Sections 10(a)(1) and (3) of Chapter 150E by discharging an employee for engaging in organizing activity. The Commission determined that the evidence did not demonstrate that the Employer had knowledge of the employee's concerted, protected activity.

3. Massachusetts Organization of State Engineers and Scientists v. LRC, A.C. No. 2000-P-647. An appeal from a full Commission decision concluding that the Employer did not change an established practice of paying employees an in-service bonus.

4. City of Westfield v. Labor Relations Commission, A.C. No. 00-P-1981. An appeal from a full Commission decision concluding that the City of Westfield violated Sections 10(a)(5) and (1) of Chapter 150E by unilaterally discontinuing its practice of allowing employees to remain on injury leave until they are physically able to return to their regular duties.

5. Commonwealth of Massachusetts v. Labor Relations Commission, A.C. 2000-P-0932. An appeal from a full Commission decision challenging the Commission's authority to award compound interest and to set interest on Commission remedies at the same rate as set forth in Section 6B of Chapter 231.